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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Mr. William Caton, Office of the Secretary  
Ms. Catherine Seidel, Common Carrier Bureau  
Federal Communications Commission  
Washington, DC 20554

Dear Mr. Caton and Ms. Seidel:

Re: Comments filed by LCI on CC Docket No. 94-129  
Policies and Rules Concerning Unauthorized Changes of  
Consumers' Long Distance Carriers

Enclosed herewith is one copy each of LCI International Telecom Corp.'s (LCI)  
comments on diskette.

Sincerely,

Michael Hazzard

0+4  
L. J. H.

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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SEP 15 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Implementation of the Subscriber Carrier )  
Selection Changes Provisions of the )  
Telecommunications Act of 1996 )  
) CC Docket No. 94-129  
Policies and Rules Concerning )  
Unauthorized Changes of Consumers' )  
Long Distance Carriers )

**COMMENTS OF LCI INTERNATIONAL TELECOM CORP. ON  
FURTHER NOTICE OF PROPOSED RULEMAKING AND MEMORANDUM  
OPINION AND ORDER ON RECONSIDERATION**

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September 15, 1997

## **Introduction and Summary**

LCI International Telecom Corp. ("LCI") hereby files comments in response to the Federal Communication Commission's ("FCC" or "Commission") Further Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration ("FNPRM"), issued by the Commission on July 15 1997.

LCI generally supports the Commission's efforts to require incumbent local exchange carriers ("ILECs") and competitive local exchange carriers ("CLECs") to satisfy the same preferred carrier ("PC") verification rules that interexchange carriers ("IXCs"), such as LCI, currently follow when changing a subscriber's preferred interexchange carrier ("PIC") for long distance service. In providing local exchange service, LCI presently abides by the Commission's PIC change rules, and thus feels that it is reasonable for CLECs and ILECs to do the same.

While LCI supports the FCC's plans to extend verification rules to the local exchange market, to the extent that the Commission extends PIC change rules to PC changes, the FCC absolutely should not permit PC freezes to occur for local exchange service. LCI firmly believes that allowing carriers to solicit, submit, and in some cases execute PC freezes in the local exchange market would amount to providing ILECs with an FCC-endorsed tool for limiting local market competition.

As for implementing PC changes, LCI feels that control of PC changes should reside with a third-party clearinghouse, not ILECs. The FCC's proposed PC change accountability rules create a conflict of interest between the ILEC's role as administrator

of PC changes and role as a competitor. A third-party clearinghouse for PC changes would eliminate the ILEC conflict of interest existing under the proposed rules.

In expanding the scope of its verification rules, the Commission should protect subscribers through the least restrictive means available. Different manners of marketing pose different slamming risks, and the Commission should implement verification requirements that fit the risk associated with a given marketing requirement.

Regarding enforcement, the FCC should follow the remedy prescribed by Congress and should not fashion its own remedy. Congress clearly stated that unauthorized carriers are liable only to the authorized presubscribed carrier only for revenue collected from unauthorized PC changes. Because Congressional intent is clear, the Commission should enforce the plain language of the statute.

Finally, the Commission should implement the Telephone Resellers Association's ("TRA") "evidentiary brightline" standard for determining whether a reseller needs notify its customers of a change in underlying network provider. The test is simple, utilizes clear evidentiary standards, and takes into account subscribers' reliance interest in the underlying carrier. Thus, the Commission should adopt the TRA test.

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## **Discussion**

LCI generally supports the Commission's efforts to require ILECs and CLECs to satisfy the same customer verification standards that LCI presently practices as an IXC. As to the Commission's effort to heighten verification standards for all carriers -- CLECs, ILECs, and IXCs alike -- LCI recommends that the Commission adopt rules that: 1) use the least restrictive means available to protect subscribers from unauthorized service changes and 2) are competitively neutral among carriers.

**I. To the extent that the FCC extends PIC change rules to all PC changes, the FCC should not allow PC freezes for local exchange service.**

In its local services operations, LCI presently abides by the Commission's verification rules, and LCI believes the Commission should require other CLECs to follow the Commission's verification rules as well. Under no circumstance, however, should the FCC authorize PC freezes in local exchange markets. Allowing ILECs to implement PC freezes in local markets would effectively give ILECs an FCC mandate to foreclose local exchange competition in its infancy.

**A. In providing local service, LCI presently abides by the Commission's existing PIC change rules.**

Preventing unauthorized PC changes will enhance competition by giving consumers confidence that they control their choice of local service provider. Absent the establishment of any local exchange PC rules, consumers affected by unauthorized service changes may become unwilling to take advantage of the benefits that derive from local exchange competition.

The Commission's four verification options -- letter of authorization ("LOA"), confirmation by 800 number, confirmation by independent third party, and welcome package -- offer carriers the flexibility needed to use the verification means that best fit carriers' marketing needs. For example, in the case of sales representatives visiting customer premises, obtaining a written LOA is an effective verification device because the customer and the sales representative meet fact to face. For out-bound telemarketing sales, third-party verification can be effective because it allows the sales representative to transfer the customer to an independent third party for verification. Thus, in protecting consumers and in developing competition, the Commission should extend flexible verification rules to all local exchange service providers.

**B. Allowing carriers to solicit, submit, and in some cases execute PC freezes in the local exchange market would provide ILECs an FCC-endorsed tool for limiting competition.**

Providing carriers with the ability to solicit, submit, and in some cases implement PC freezes for local exchange service effectively would provide ILECs with an FCC-sanctioned means of foreclosing competition in local exchange markets. The Commission's proposed rule states that carriers may encourage subscribers to request PC freezes through mailers that (a) explain PC freezes, (b) explain subscribers' rights to request a freeze, and (c) explain to subscribers how to obtain PC freezes.<sup>1</sup> In the local exchange market, PC freezes will limit competition by increasing the transactions costs associated with changing carriers.

Recent history suggests that ILECs will exploit fully any opportunity to foreclose their customers from competition, and the FCC should expect ILECs similarly to exploit any

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<sup>1</sup> FNPRM at ¶23.

opportunity to solicit and execute PC freezes. The BOCs already distribute "Dear Valued Customer"<sup>2</sup> letters designed to discourage customers from changing their local exchange carrier, and the BOCs most definitely would like nothing more than to include in future iterations of these letters instructions on how -- and why -- customers should freeze their local exchange service with the BOC. Thus, allowing ILECs to market and execute PC freezes would serve only to legitimize ILEC efforts to forestall competition.

Even in instances where the Commission has acted expressly to promote competition, ILEC foot dragging has worked to thwart competition. For example, in the Second Report and Order on Recon.,<sup>3</sup> the FCC directly affirmed that ILECs must provide parity of access to operations support systems ("OSS") by January 1, 1997,<sup>4</sup> yet nearly ten months later, not a single ILEC provides competitors with OSS parity.<sup>5</sup> Incumbent shirking of their responsibilities for opening local markets has caused the Commission to form a task force to monitor competitive

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<sup>2</sup> An example of a "Dear Valued Customer" letter is attached hereto as Exhibit A.

<sup>3</sup> Second Report and Order on Reconsideration, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 19738 (1996), further recon. pending, aff'd in part and vacated in part sub. nom. CompTel v. FCC, 11 F.3d 1068 (8th Cir. 1997), aff'd in part and vacated in part sub nom. Iowa Utilities Bd. v. FCC and consolidated cases, No. 96-3321 et al., 1997 WL 403401 (8th Cir., Jul. 19, 1997) CC Docket No. 96-98 (December 13, 1996) ("Second Report and Order on Recon.").

<sup>4</sup> Second Report and Order on Recon. at ¶2 ("... in order to comply with the requirement to provide nondiscriminatory access to unbundled network elements and services for resale, incumbent LECs also are required by January 1, 1997, to offer nondiscriminatory access to OSS functions").

<sup>5</sup> Reply Comments of LCI International Telecom Corp. on Public Notice Concerning Petition for Expedited Rulemaking to Establish Reporting Requirements and Performance and Technical Standards for Operations Support Systems, RM 9101, July 30, 1997 at p. 2.

developments in local markets and also has caused the Commission to open a docket to examine why competitive growth in the local market has materialized slowly.<sup>6</sup>

The potential competitive losses caused by ILEC-generated PC freezes for local service outweigh consumer gains in using PC freezes as a means of preventing unauthorized carrier changes. By extending verification rules to local service changes, the FCC will provide consumers with the protection necessary to prevent unauthorized carrier changes. Adding the PC freeze option on top of the Commission's verification rules may marginally decrease the likelihood of unauthorized service changes, but the PC freeze option would exponentially increase the incumbents' ability to thwart competition by giving the ILECs a preemptive device, sanctioned by the FCC, with which to maintain ILEC monopolies. Thus, the Commission should not endorse local exchange PC freezes.<sup>7</sup>

## **II. Control of PC changes should reside with a third-party clearinghouse, not ILEC.**

With the FCC erasing line-of-business restrictions as competition develops, fairness demands that all PC change execution responsibility reside with a third party clearinghouse, and not with ILEC. The Commission should not allow ILECs to control PC change and freeze execution for themselves and their competitors. Leaving this power in the hands of the ILECs creates a clear conflict of interest between the ILEC role as master of PC changes and role as market competitor. The Commission should modify its current proposal of allowing the ILECs

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<sup>6</sup> In the Matter of Commission Actions Critical to the Promotion of Local Exchange Competition, CCBPol 97-9.

<sup>7</sup> Once competition firmly takes root in the local exchange market, the Commission may wish to consider again whether PC freezes should be available for local exchange service.

to control PC changes and endorse a third-party clearinghouse model to execute PC changes. If the Commission chooses to maintain ILECs as the executor of PC changes, the Commission should mandate stringent reporting requirements to ensure that ILECs provide competitors parity of access to PC changes on a nondiscriminatory basis.

**A. The proposed accountability rules for submitting and executing carriers are not administrable because, as drafted, the rules create a conflict of interest between the ILEC's role as administrator of PC changes and role as a competitor.**

Any system that places monopolists in the roles of referee and competitor is inherently difficult to administer as it gives the appearance -- if not the reality -- of being structurally unfair. Under the system proposed by the Commission, ILECs will own the process of determining which competitors provide service to which customers, how rapidly service changes are implemented, and how strictly verification rules are enforced. These rules will incent ILECs to discriminate against competitors, to not verify ILEC orders as stringently as CLEC orders, and to abuse customer proprietary network information ("CPNI").

**1. The proposed rules incent ILECs to discriminate against competitors.**

The submitting and executing rules proposed by the Commission incent ILECs to discriminate against IXCs and CLECs submitting PC changes. PC change volumes likely will increase as ILECs make strides in the long distance market and as CLECs make strides in local markets. As these volumes increase, the Commission's rules could encourage ILECs to discriminate in favor of their long distance affiliates and local retail operations. For example, ILECs could discriminate by processing competitor orders more slowly than ILECs process their

own orders or by using more rigorous verification standards for competitor orders than for ILEC orders. The proposed rules are silent as to how to prevent subtle discrimination in order processing and verification.

**2. The proposed rules incent ILECs to make PC changes without proper verification.**

The submitting and executing rules proposed by the Commission incent ILECs to make PC changes without proper verification. The Commission itself notes that its rules may give ILECs “an enhanced ability to make unauthorized PC changes on their own behalf without detection.”<sup>8</sup> The Commission counters this point by stating that heightened ILEC scrutiny of CLEC PC change requests will “have the positive effect of lessening or eliminating the occurrence of unauthorized PC changes.”<sup>9</sup> The Commission does not complete the analysis, failing to note that while ILECs zealously may guard against unlawful PC changes submitted by CLECs, ILECs are very unlikely to monitor themselves as carefully. Under the Commission’s propose rules, no one -- absolutely no one -- is charged with monitoring the PC changes submitted by the ILECs.

**3. The proposed rules incent ILECs to abuse CPNI.**

The submitting and executing rules proposed by the Commission incent ILECs to misuse CPNI. As the executors of nearly all PC changes, ILECs will receive basic CPNI data on nearly every single competitor’s customers. Detecting whether ILECs, CLECs, or IXC are using CPNI unlawfully or are purchasing customer data lawfully from an independent third party

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<sup>8</sup> FNPRM at p. 11, n. 49.

<sup>9</sup> Id. at n. 50.

essentially will be impossible to monitor. The difficulty of detecting abuse combined with the ILECs' comparative information advantage could incent ILECs to exploit CPNI that ILECs receive to execute PC changes. Despite the certain perception of impropriety and the likelihood of ILEC discrimination, lax verification of ILEC orders, and CPNI abuse, the Commission places no verifiable safeguards on the ILECs in their role as PC change executor.

**B. Third party clearinghouse control of PC changes would eliminate the tension between the ILEC's role as executing carrier and as market competitor.**

The FCC should consider utilizing an independent third party as a PC change clearinghouse to eliminate the tension that exists with ILECs serving as both PC change referee and competitor. A clearinghouse approach would place ILECs in the same position as CLECs and IXC's relative to PC changes.

**1. A PC change clearinghouse would put competitors --CLECs, ILECs, and IXC's alike -- on equal footing.**

An FCC endorsed, independent PC change clearinghouse would eliminate the discrimination and verification problems that could occur from mandating that ILECs police their own and their competitors' PC changes. A clearinghouse model would likely mitigate ILEC CPNI abuse by limiting the amount of CPNI data that ILECs receive. That is, if ILECs do not have data on their competitors' customers, they will not be tempted to use competitors' CPNI data unlawfully. Thus, the clearinghouse approach would go a long way toward eliminating any actual or perceived impropriety of having the ILECs serve as gatekeepers of PC changes. The

Commission successfully has developed clearinghouse models in similar cases (e.g., 800 number portability) and should do so again to ensure that PC changes are executed fairly.

**C. If the FCC determines that ILECs will remain responsible for executing PC changes, the Commission should implement PC change reporting and verification requirements to minimize the risk of ILEC opportunism.**

If the FCC concludes that ILECs should serve as both submitting and executing carriers of PC changes, the Commission should act to mitigate the competitive risks associated with having ILECs serve as submitting and executing carriers. In the FNPRM the Commission suggested that commenters address “requirements” or “prohibitions” that the Commission could implement to offset ILEC advantages as executing carriers.<sup>10</sup> To offset anticompetitive risks, the FCC should require ILECs to provide competitors with parity of access to PC changes on a nondiscriminatory basis and to track and report data on PC changes to ensure that ILECs meet parity and nondiscrimination requirements. Additionally, for all PC transactions for which an ILEC serves as the submitting and executing carrier, the FCC should require independent third party verification before implementation.

**1. The Commission should require ILECs to provide parity of access to PC changes on a nondiscriminatory basis and also should mandate ILEC reporting and record keeping requirements to minimize the ability of ILECs to discriminate against competitors.**

The Commission should state in its order that ILECs must provide competitors parity of access to PC changes on a nondiscriminatory basis. Parity of access means that ILECs must

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<sup>10</sup> Id. at p. 11.

provide competitors with access to PC changes at least as quickly and as accurately as each ILEC provides itself. Nondiscriminatory access means that each ILEC must provide its competitors with access to PC changes at least as quickly and as accurately as the ILEC provides other competitors. In cases where ILECs are not providing parity of access to PC changes on a nondiscriminatory basis, the Commission should stay an ILEC's ability to implement PC changes submitted on its own behalf until such time as the ILEC can demonstrate that it is meeting Commission requirements.

To measure whether ILECs are providing parity of access to PC changes, the Commission should require ILECs to record and report data on PC changes. In these reports, ILECs should disclose on a monthly basis performance benchmarks (e.g., time it takes to implement PC change) for PC changes and maintain these records over time. Reports should contain data relating to the ILEC itself, ILEC affiliates/subsidiaries, IXC competitors in aggregate, and CLEC competitors in aggregate. Additionally, each IXC and CLEC should receive their own individual performance data. With these reports the Commission, competitors, and ILECs will have the ability to determine whether an ILEC is providing parity of access to competitors on a nondiscriminatory basis.

**2. The Commission should require independent third party verification of ILEC submitted PC changes before execution to minimize the ability of ILECs to ignore verification requirements.**

In addition to meeting the verification requirements of submitting carriers,<sup>11</sup> the Commission should require ILECs to obtain independent third party verification of ILEC submitted PC changes. As noted, the Commission's proposed rules incent ILECs to act as an independent third parties that verify CLEC PC change submissions. ILEC PC changes, in cases where the ILEC acts as the submitting and executing carrier, face no independent verification check, making it comparatively easier for ILECs to shirk verification responsibilities. Requiring ILECs to receive independent third party verification before executing ILEC-submitted PC changes fundamentally would equalize the scrutiny CLEC and ILEC PC changes face, and thus would offer subscribers equal protection from unauthorized carrier changes submitted by CLECs and ILECs.

**III. In expanding the scope of its verification rules, the Commission should protect subscribers through the least restrictive means available.**

As the Commission moves to expand the scope of its verification rules, it should implement rules that protect subscribers from unauthorized PC changes through the least restrictive means available. That is, the Commission should implement less rigid verification standards for activities unlikely to result in unauthorized PC changes, such as in-bound

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<sup>11</sup> The Commission's proposed rules contemplate three verification options for submitting carriers: 1) LOA from subscriber, 2) verification from subscriber through a toll-free number used exclusively for confirming orders, and 3) verification from subscriber through an independent third party. The Commission's existing rules allow a fourth option, typically called the "welcome package"; however, the Commission has "tentatively concluded" that it should eliminate this verification alternative. FNPRM at ¶ 18.

telemarketing, and the Commission should implement heightened verification standards for activities relatively more likely to result in unauthorized PC changes, such as out-bound telemarketing.

**A. Because in-bound telemarketing requires affirmative action by customers, in-bound telemarketing should remain exempt from the Commission's verification rules.**

In-bound telemarketing should remain exempt from the Commission's verification rules as it is less likely to lead to an unauthorized PC change than are other forms of marketing. In-bound telemarketing, by definition, requires affirmative action by a customer who contacts the telecommunication provider to purchase service. Through other forms of marketing, such as out-bound telemarketing or door-to-door sales, the telecommunications service provider actively contacts the customer, who passively receives the solicitation. Because subscribers themselves generate in-bound telemarketing calls, telecommunication service providers should not be required to verify PC change requests.

**B. If the Commission chooses to extend the scope of verification to in-bound telemarketing, then the Commission should regulate in-bound telemarketing separately from active forms of solicitation.**

If the Commission extends its PC change verification rules to in-bound telemarketing, the Commission should regulate passive in-bound telemarketing less rigidly than it regulates active forms of solicitation. As noted, because consumers actively place in-bound telemarketing calls to request a PC change, in-bound telemarketing creates less of a slamming risk than does out-bound telemarketing. Because in-bound telemarketing creates less of a slamming risk than other

forms of marketing, the Commission should regulate in-bound telemarketing verification through a less restrictive means than the Commission regulates activities more likely to result in unauthorized PC changes.

The “welcome package” verification option<sup>12</sup> likely would provide subscribers with the safeguards necessary to prevent unauthorized PC changes through in-bound telemarketing. In the FNPRM, the Commission tentatively concludes that it should eliminate the welcome package verification option because it acts as a “negative-option LOA” in that it requires consumers to take an affirmative step to stop a PC change.<sup>13</sup> While the welcome package may not be an adequate PC verification device in every case, it would likely serve as an effective verification device for low-risk marketing activities, such as in-bound telemarketing.

In-bound telemarketing requires affirmative action by a subscriber who requests a PC change. Because the potential subscriber actively has solicited the telecommunications provider for service, the risk of an unauthorized PC change is low. Therefore, while the Commission may want to limit the use of the welcome package as a verification device for activities that present a high risk of unauthorized PC changes, the Commission should retain the welcome package as a low burden verification device for activities, such as in-bound telemarketing, that present minimal risk of unauthorized PC changes.

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<sup>12</sup> The welcome package is a PC verification option that “requires IXCs to send each new customer an information package, including, inter alia, a prepaid postcard, which the customer can use to deny, cancel, or confirm the [PC] change order.” Id. at ¶ 18.

<sup>13</sup> Id.

**IV. The Commission likely lacks authority to make carriers liable to subscribers for unauthorized carrier changes.**

The plain language of section 258(b) of the Act suggests that the Commission lacks authority to make carriers liable to subscribers for unauthorized PC changes. Section 258(b) provides that unauthorized carriers are liable only to the presubscribed carrier only for revenues collected from the subscriber wrongly obtained by the unauthorized carrier.

**A. Section 258(b) of the Act unambiguously states that unauthorized carriers are liable only to the presubscribed carrier only for revenue collected from unauthorized PC changes.**

Section 258(b) unambiguously provides that unauthorized carriers are liable only to the presubscribed carrier for charges collected due to the unauthorized PC change:

Liability for Charges. -- Any telecommunications carrier that **violates the verification procedures** described in subsection (a) **and that collects charges** for telephone exchange service or telephone toll service from a subscriber shall be **liable to the carrier previously selected** by the subscriber **in an amount equal to all charges paid by such subscriber** after such violation, in accordance with such procedures as the Commission may prescribe. The remedies provided by this subsection are in addition to any other remedies available by law.<sup>14</sup>

Because the Congressional remedy provided section 258(b) is express and unambiguous, the Commission should follow it, and not substitute its own remedy. "If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress."<sup>15</sup> In section 258(b), Congress expressly indicated that before the Commission could find a telecommunications service provider liable for charges resulting from an unauthorized PC change, the Commission would have to demonstrate: 1) that

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<sup>14</sup> 47 U.S.C. § 258(b)(emphasis added).

<sup>15</sup> Chevron U.S.A. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-43 (1984) ("Chevron").

the carrier violated the Commission's verification rules and 2) that the carrier collected charges resulting from the unauthorized service change. If the Commission establishes these two conditions, the Commission must require the unauthorized carrier to remit to the authorized carrier any revenue collected as a result of the unauthorized service change. Thus, this section, entitled "liability for charges," expressly requires carrier-to-carrier compensation, unambiguously excluding carrier-to-subscriber compensation for unauthorized PC changes.

**B. The Commission has authority only to require unauthorized carriers to compensate the presubscribed carriers for subscriber premiums lost due to unauthorized carrier changes.**

The Commission has authority only to require unauthorized carriers to compensate presubscribed carriers for anything more than the amount of revenue collected from the unauthorized PC change.<sup>16</sup> "[I]n defining agency jurisdiction Congress sometimes speaks in plain terms, in which case the agency has no discretion."<sup>17</sup> Section 258(b) plainly states that "any telecommunications carrier that violates [the Commission's] verification rules ... shall be liable to the carrier previously selected ... in an amount equal to all charges paid by such subscriber after such violation." This plain language clearly and unambiguously indicates that Congress intended unauthorized carriers to remit any unauthorized charges collected only to the authorized carrier. Because Congress has provided its remedy in plain and unambiguous terms, the Commission lacks authority to fashion a remedy that requires unauthorized carriers to

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<sup>16</sup> 47 U.S.C §258(b).

<sup>17</sup> Mississippi Power & Light Co. v. Moore, 487 U.S. 354, 382 (1988) (Scalia, J., concurring); see also, Chevron, 467 U.S. at 843.

reimburse authorized carriers for anything in excess of charges collected, such as subscriber premiums.<sup>18</sup>

**V. The Commission should implement the TRA's "evidentiary brightline" standard related to the lawfulness of a resale carrier's change in underlying network provider.**

The Commission should adopt TRA's evidentiary brightline standard, which outlines when a reseller must notify its customers of underlying network provider changes. The TRA test requires a reseller to notify customers of an underlying network provider change when a reseller either: 1) identified its network provider to its subscribers and committed to its subscribers in writing that it would not switch networks or 2) identified its network provider on a bill or other correspondence to its subscribers within the six months prior to the network provider change.<sup>19</sup>

The TRA two-prong test appears appropriate as it is simple, direct, and based on readily available evidence, and thus the Commission should adopt this test and give it conclusive weight in determining whether a reseller should provide customers with notification of underlying network provider changes. The test's effort to probe the extent to which the reseller has created in its customers a reliance interest in the underlying network provider should protect consumers. The test's ease of administration and clear evidentiary standards should provide resellers with certainty regarding when they must notify customers of underlying network provider changes. Thus, because the test is simple and easy to administer, because the test will provide resellers

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<sup>18</sup> Even if the FCC possesses the authority to "make consumers whole" for lost premiums, any effort to exercise this authority would be exceedingly difficult to administer. Premiums, such as air miles and raffle chances, can be difficult to quantify.

<sup>19</sup> FNPRM at ¶ 38.

with certain knowledge of their responsibilities, and because the test attempts to assess objectively subscriber reliance on the underlying network provider, the Commission should use the TRA test as conclusive proof of whether a carrier is required to notify subscriber of underlying network provider changes.

### **Conclusion**

For the foregoing reasons, LCI recommends the following:

1. To the extent that the Commission regulates PC changes, the Commission should apply the same rules to local and interexchange markets;
2. The FCC should not allow PC freezes for local exchange service;
3. Control of PC changes should reside with a third-party clearinghouse, not the ILECs;
4. In expanding the scope of its PC verification rules, the Commission should protect subscribers through the least restrictive means available;
5. As for remedies, the Commission should follow the plain language of the Act and require only that unauthorized carriers reimburse authorized carriers for charges collected; and
6. The Commission should implement the TRA evidentiary brightline standard related to the lawfulness of a resale carrier's change in underlying network provider.

DATED: September 15, 1997

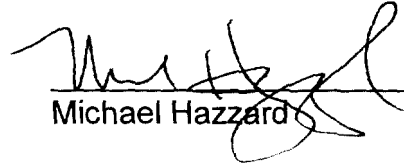
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## CERTIFICATE OF SERVICE

I, Michael Hazzard, do hereby certify that copies of Comments of LCI International Telecom Corp. ("LCI") on CC Docket No. 94-129, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers were served this 15th day of September, 1997 to the following by hand delivery.



Michael Hazzard

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## EXHIBIT A